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14 **UNITED STATES BANKRUPTCY COURT**

15 **DISTRICT OF NEVADA**

16 In re:  
17 THE RHODES COMPANIES, LLC, aka  
18 "Rhodes Homes," et al.,

19 Reorganized Debtors

Case No.: 09-14814-LBR  
(Jointly Administered)

Chapter 11

**MOTION FOR RECUSAL**

Hearing Date: \_\_\_\_\_

Hearing Time: \_\_\_\_\_

Place: Courtroom 1

20 ☒ Affects all Debtors

21 ☐ Affects the following Debtors  
22 \_\_\_\_\_

23 James M. Rhodes ("**Rhodes**"), through counsel, respectfully moves this Court pursuant to  
24 28 U.S.C. § 455, made applicable herein by Rule 5004 of the Federal Rules of Bankruptcy  
25 Procedure, for entry of an order disqualifying the Honorable Linda B. Riegle, United States  
26

1 Bankruptcy Judge (“**Judge Riegle**”), from presiding over any proceeding or contested matter in  
2 the above-entitled bankruptcy case. In support hereof, Rhodes states as follows:

3 **FACTUAL BACKGROUND**

4 1. On either March 31, 2009 or April 1, 2009<sup>“</sup>, each of the debtors (collectively, the  
5 “**Debtors**”) commenced with this Court a voluntary case under Chapter 11 of title 11 of the  
6 United States Bankruptcy Code<sup>”</sup>.

7 2. On July 17, 2009, Rhodes filed proof of claim No. 814-33 (the “**Proof of Claim**”)  
8 seeking \$10,598,000 for: (i) the reimbursement of taxes paid by Rhodes for the 2006 tax year in  
9 the amount of \$9,729,151; and (ii) \$868,849 advanced to Greenway Partners, LLC. Rhodes  
10 repeatedly has informed the Court that he does not seek to collect his claim for the taxes paid  
11 from the Debtors, but merely seeks a setoff against any claims the above-captioned Reorganized  
12 Debtors (the “**Reorganized Debtors**”) (through the Litigation Trust) may have against him.  
13

14 3. On May 27, 2010, the Reorganized Debtors filed an objection to the Proof of  
15 Claim. Additionally, the Reorganized Debtors indicated that contemporaneously with the filing  
16 of their objection they were amending their schedules and statements to remove certain scheduled  
17 claims.  
18

19 4. On June 17, 2010, Rhodes filed an opposition to the objection in the bankruptcy  
20 case.  
21

22 5. Throughout the consideration of the Reorganized Debtors’ objection, Judge Riegle  
23 has shown open and blatant animosity towards Rhodes and his business practices and has  
24 exhibited clear one-sidedness. Indeed, at the November 4, 2010 hearing on the Reorganized  
25 Debtors’ objection to the Proof of Claim, and without any adversary proceeding having ever been  
26

1 commenced against Rhodes, Judge Riegle implied that Rhodes had defrauded creditors and it was  
2 improper for him to have accepted certain distributions from the Debtors at a time when he  
3 controlled those entities:

4 THE COURT: – and I’m not sure what legal or relevance this has. This was  
5 income that was passed through, at a time when creditors were being – were not  
6 being paid, correct?

7 MR. QURESHI: I believe that is correct.

8 THE COURT: And so we have millions of creditors who weren’t paid – well, the  
9 23 million was passed through to him.

10 MR. QURESHI: That’s correct.

11 (November 4, 2010 Hearing Transcript at 4:11–19, attached hereto as “**Exhibit A**”).

12 6. Later in the same hearing, Judge Riegle openly suggested that Rhodes conduct  
13 constituted a breach of fiduciary duty, even though that hearing had nothing to do with Rhodes’  
14 alleged conduct with respect to the Debtors and, again, no adversary proceeding had been  
15 commenced:

16 THE COURT: Well, doesn’t that also raise issues of his breach of fiduciary duty?

17 (November 4, 2010 Hearing Transcript at 16:14–15, Ex. A).

18 THE COURT: So you would say that he would knowingly breach his fiduciary  
19 duty, in order to give himself this payment.

20 MR. ANDERSON: How does he breach a fiduciary duty when he owns a hundred  
21 percent of Sage Brush. Sage Brush –

22 THE COURT: When creditors aren’t paid.

23 MR. ANDERSON: Well, what fiduciary duty does he have to creditors?

24 THE COURT: A deepening insolvency.

25 (November 4, 2010 Hearing Transcript at 20:24–21:7, Ex. A).

1  
2 7. Similarly, at the September 27, 2011 hearing, and again without any adversary  
3 proceeding having been commenced against Rhodes, Judge Riegle suggested that Rhodes had  
4 somehow acted improperly when several of his entities filed for bankruptcy but he did not file  
5 personally:

6 THE COURT: There are a number of entities that did not file bankruptcy that Mr.  
7 Rhodes held.

8 MR. HAGUE: That –

9 THE COURT: And Mr. Rhodes –

10 MR. HAGUE: That’s correct.

11 THE COURT: – indeed, did not file bankruptcy himself.

12 MR. HAGUE: That’s correct, your Honor.

13  
14 (September 27, 2011 Hearing Transcript at 38:16–24, attached hereto as “**Exhibit B**”).

15 8. Yet again, at the September 27, 2011 hearing, Judge Riegle’s comments did little  
16 to hide her unreserved bias and animosity towards Rhodes and his business practices.  
17 Repeatedly, Judge Riegle implied that Rhodes was motivated by greed and “cheat[ed]” or  
18 otherwise “sneakily” operated his businesses because he “want[ed] even more money”:

19 THE COURT: Why isn’t it a gift?

20 MR. HAGUE: Because they did services for the debtor.

21  
22 THE COURT: He can make a gift. It’s his companies.

23 MR. HAGUE: Yeah. But that’s not what he has stated in his declaration, so we  
24 now know there’s not a gift. These are facts. These are facts –

25 THE COURT: Well, sure. After the fact, he does it.

26 MR. HAGUE: No. This happens as he goes through. That’s why he has already

1           been reimbursed 1.2 million.

2           THE COURT: And he wants even more money.

3           MR. HAGUE: He wants what he paid out, your Honor.

4           THE COURT: He wants even more money.

5           MR. HAGUE: Your Honor, you may not like the situation. I understand that, but  
6           I'm just telling you what we have submitted and what they have failed –

7           THE COURT: After he –

8           MR. HAGUE: – to even rebut.

9           THE COURT: – sneakily –

10          MR. HAGUE: I'm sorry?

11          THE COURT: After he goes around his own company to pay these people –

12          MR. HAGUE: Your Honor –

13          THE COURT: – how is that equity?

14          MR. HAGUE: Your Honor, he was –

15          THE COURT: How does he have clean hands?

16          MR. HAGUE: He was the –

17          THE COURT: You're asking for equity. How does he have clean hands?

18          MR. HAGUE: Well, I'm not even necessarily – I'm asking for more than equity.  
19          I'm asking for something that's just built into a contract pretty much and  
20          performance.

21          THE COURT: Why didn't he write –

22          MR. HAGUE: Now, you're asking –

23          THE COURT: – a contract?

24          MR. HAGUE: I'm sorry?

1  
2 THE COURT: Why didn't he do a contract?

3 MR. HAGUE: Why did he need to do a contract if there was performance?  
4 You're asking that why they did this around his companies.

5 Your Honor, he was the companies. He was the nondebtor. He was the debtor.  
6 He was the CEO. And as the CEO and the director and the sole shareholder, he  
7 has 100-percent right to be able to say this is the type of arrangement we're going  
8 to do.

9 I'm going to employ you, but guess what? There's a whole bunch of other folks in  
10 this office –

11 THE COURT: I want to cheat.

12 MR. HAGUE: There's a whole bunch of other folks in this office who are going  
13 to want to cheat up their amount that they're owed.

14 They're going to come and say, hey, what about us. We just found out he's  
15 making this amount of money through his W-2, so what does he do because – give  
16 you an example. Chris Stephens, he was in charge –

17 THE COURT: So he chooses –

18 MR. HAGUE: – of entitlements.

19 THE COURT: – to employ them on his own.

20 MR. HAGUE: So he chooses to pay them on his own for the work they were  
21 doing for the debtors –

22 THE COURT: Which helped him as well.

23 MR. HAGUE: – which helped the debtors.

24 THE COURT: Which helped him.

25 MR. HAGUE: I guess if you're saying they're one economic unit, and he is  
26 benefiting the exact same way the debtors are.

(September 27, 2011 Hearing Transcript at 40:11–42:25 (emphasis added), Ex. B).

1           9.       At one point during the September 27, 2011 hearing, Judge Riegle went so far as  
2 to act as an advocate for the Litigation Trust. Judge Riegle suggested Rhodes would be liable for  
3 fraudulent conveyance. Indeed, she invited the opposing counsel to ***amend*** their lawsuit (even  
4 though no lawsuit has been filed) to include such a claim:

5           THE COURT: And if you intend to amend your lawsuit for a fraudulent  
6 conveyance of what he's paid back, already, do it. I mean, maybe what he was  
7 paid already is a fraudulent conveyance. I don't see why it wouldn't be.

8 (September 27, 2011 Hearing Transcript at 58:7–10, Ex. B) (emphasis added)).

9           10.       Most recently, at the October 5, 2011 hearing, Judge Riegle again showed her  
10 disdain for Rhodes and implied his business practices were inappropriate:

11           THE COURT: Okay. So he doesn't control – how do we know what entities he  
12 even controls?

13           MR. ANDERSON: Well, the –

14           THE COURT: He's kind of kept all that quiet.

15 (October 5, 2011 Hearing Transcript at 12:6–9, attached hereto as Ex. C).

16           THE COURT: We already know that Mr. Rhodes kind of led a slipshod way of  
17 doing business. We have in the proof-of-claim process. He is claiming he should  
18 be reimbursed for paying a third party because he wanted to keep it off the books.

19           All these kinds of transactions deserve investigation in other contexts as well. We  
20 know he didn't care much about his books and records from the way he did his  
business.

21 (October 5, 2011 Hearing Transcript at 21:13–19, Ex. C).

## ARGUMENT

### **I. JUDGE RIEGLE SHOULD RECUSE HERSELF FROM ANY PROCEEDINGS IN THE ABOVE-ENTITLED CASE BECAUSE HER CLEAR SHOWING OF DISDAIN AND ANIMOSITY TOWARDS RHODES AND HIS BUSINESS PRACTICES DEMONSTRATE SHE IS UNABLE TO ACT IMPARTIALLY.**

Judge Riegle should recuse herself from any further proceedings in the above-entitled case because her improper statements show hostility towards Rhodes and may lead a reasonable person to question her impartiality. Pursuant to 28 U.S.C. § 455(a), made applicable herein by Rule 5004 of the Federal Rules of Bankruptcy Procedure, a bankruptcy judge “shall disqualify [herself] in any proceeding in which [her] impartiality might reasonably be questioned.” *Id.* (Emphasis added). Section 455(a) is a “catchall” recusal provision that covers both “interest or relationship” and “bias or prejudice” grounds, “but require[s] them *all* to be evaluated on an *objective* basis, so that what matters is not the reality of bias or prejudice but its appearance.” *Liteky v. United States*, 510 U.S. 540, 548 (1994) (emphasis in original). Accordingly, 28 U.S.C. § 455 imposes an affirmative duty upon judges to recuse themselves when “a reasonable person with knowledge of all the facts would conclude that the judge’s impartiality might reasonably be questioned.” *United States v. Hernandez*, 109 F.3d 1450, 1453 (9th Cir. 1997) (internal quotation marks and citations omitted); *Yagman v. Republic Ins.*, 987 F.2d 622, 626 (9th Cir. 1993) (citations and internal quotation marks omitted). Indeed, “a judge’s participation in a case must never reach the point where it appears, or is even perceived to appear, that the judge is aligned with any party in the pending litigation.” *Alexander v. Primerica Holdings, Inc.*, 10 F.3d 155, 166 (3d Cir. 1993) (emphasis added).

To that end, if a judge has any question about the propriety of sitting in a particular case, the judge should exercise her discretion in favor of disqualification. *See Nichols v. Alley*, 71 F.3d



1 347, 352 (10th Cir. 1995); *United States v. Dandy*, 998 F.2d 1344, 1349 (6th Cir.1993). While  
2 beliefs or opinions that merit recusal generally involve an extrajudicial factor, opinions formed by  
3 the judge on the basis of facts introduced or events occurring in the course of the current  
4 proceedings may constitute a basis for bias or partiality if “they display a deep-seated favoritism  
5 or antagonism that would make fair judgment impossible.” *Liteky*, 510 U.S. at 555.  
6

7 In *Fairley v. Andrews*, 423 F. Supp. 2d 800 (N. D. Ill. 2006), the court found recusal was  
8 appropriate under 28 U.S.C. § 455(a) when a judge made statements that, when considered  
9 together, “may give pause to a non-legal observer, not versed in the ways of the courtroom and  
10 the risks of litigation.” *Id.* at 821. The judge in question made statements regarding public  
11 corruption and the governmental defendants’ obstinate refusal to consider settlement in an inmate  
12 abuse case. *Id.* The judge repeatedly accused the defense counsel of wasting public money by  
13 refusing to settle. *Id.* In its analysis, the court noted that there was no extrajudicial source of bias  
14 and that, when viewed in the proper context, the judge’s individual statements did not warrant  
15 recusal. *Id.* Regardless, the court found that, when considered together, especially in the wider  
16 context of the court’s negative interactions with defendants’ counsel, a reasonable person may  
17 question the judge’s impartiality and, therefore, recusal was required. *Id.*  
18

19 Here, like in *Fairley*, Judge Riegle has made several improper and completely  
20 unsubstantiated statements that undoubtedly throw her impartiality into question. Judge Riegle  
21 has repeatedly suggested that Rhodes has committed fraud and breached his fiduciary duties.  
22 Indeed, Judge Riegle has described Rhodes as a “cheat” motivated by greed who “sneakily”  
23 operated his businesses in an effort to get “even more money.” These improper statements have  
24 been made in a proof of claim proceeding. No litigation has even been commenced against  
25  
26

1 Rhodes. From the outset, Judge Riegle has made it clear that Rhodes and his business practices  
2 are repugnant to her. Judge Riegle has repeatedly made comments that Rhodes has “taken”  
3 payments from the Debtors and improperly remained out of personal bankruptcy while the  
4 Debtors did not. She has even gone so far as to suggest that opposing counsel add additional  
5 claims against Rhodes for fraudulent conveyance and indicated that such claims would most  
6 likely prevail, even though no adversary proceeding has ever been commenced against Rhodes.  
7 There is no question that any reasonable person—especially a non-legal observer—might  
8 question Judge Riegle’s impartiality. And if there were ever a case where a judge was aligned  
9 with a party and displayed a deep-seated favoritism or antagonism that would make fair judgment  
10 impossible, it is this Bankruptcy Case.  
11

12 Furthermore, even if Judge Riegle has no actual bias or prejudice towards Rhodes, which  
13 is certainly questionable in light of her repeated and baseless comments, the standard for recusal  
14 is simply whether a reasonable person could question her impartiality. *Hernandez*, 109 F.3d at  
15 1453. This standard is clearly met. Moreover, if there is any question, which there clearly is, the  
16 balance tips in favor of disqualification. *Nichols*, 71 F.3d at 352. As in *Fairely*, Judge Riegle’s  
17 comments, when taken together, would give any reasonable person cause to question her  
18 impartiality. Accordingly, to maintain the Court’s integrity, Judge Riegle should be disqualified  
19 from any proceedings in the above-entitled case.  
20

### 21 CONCLUSION

22 For the reasons stated above, Rhodes respectfully requests that the Court enter an order  
23 disqualifying Judge Riegle from presiding over any proceeding or contested matter in the above-  
24 entitled bankruptcy case.  
25  
26

1 DATED this 14<sup>th</sup> day of November, 2011.

2  
3  
4 /s/ David R. Hague

5 Kevin N. Anderson

6 David R. Hague

7 FABIAN & CLENDENIN

8 *Attorneys for James M. Rhodes*  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 14th day of November, 2011, I caused the foregoing document to be filed electronically via the electronic filing system of the United States Bankruptcy Court for the District of Nevada, which caused a true and correct copy of the foregoing to thereafter be served electronically via the Bankruptcy Court's ECF noticing system upon those parties registered to receive electronic service in this case.

/s/ David R. Hague

4833-3448-0653, v. 2

# EXHIBIT A

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

In re:

THE RHODES COMPANIES, LLC CH: 11 09-14814-LBR

CONTINUED STATUS HEARING RE: OBJECTION  
TO JAMES RHODES' PROOF OF CLAIM NO.  
814-33 AND AMENDMENT OF SCHEDULES OF  
ASSETS AND LIABILITIES FILED BY NILE  
LEATHAM ON BEHALF OF REAORGANIZED  
DEBTORS

U.S. Bankruptcy Court  
300 Las Vegas Boulevard South  
Las Vegas, Nevada 89101

November 4, 2010  
9:35 a.m.

BEFORE THE HONORABLE LINDA B. RIEGLE, Judge

APPEARANCES:

For The Reorganized Debtors: Abid Qureshi  
AKIN, GUMP STRAUSS HAUSER & FELD,  
LLP  
One Bryant Park  
New York, New York 10036-6745

For James Rhodes: Kevin N. Anderson  
FABIAN & CLENDENIN  
215 S. State Street, Suite 1200  
Salt Lake City, Utah 84111-2323

For The Rhodes Companies,  
LLC: Zachariah Larson  
LARSON & STEPHENS  
810 S. Casino Center Blvd., #104  
Las Vegas, Nevada 89101-6719

Proceedings recorded by electronic sound technician, Patricia  
Lilly; transcript produced by AVTranz.

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1 more, nor less, than an enforceable obligation." And that  
2 citation is 537 US 293 F. 303.

3 And so, Your Honor, the question here, the burden on  
4 Mr. Rhodes, is to demonstrate that a debtor entity has an  
5 enforceable obligation to reimburse Mr. Rhodes for a tax  
6 payment that he made, on account of taxable income that was  
7 passed through to him through the corporate structure of LLCs  
8 and partnerships.

9 THE COURT: Now this is an aside --

10 MR. QURESHI: Yeah.

11 THE COURT: -- and I'm not sure what legal or  
12 relevance this has. This was income that was passed through,  
13 at a time when creditors were being -- were not being paid,  
14 correct?

15 MR. QURESHI: I believe that is correct.

16 THE COURT: And so we have millions of creditors who  
17 weren't paid -- well, the 23 million was passed through to him.

18 MR. QURESHI: That's correct.

19 So, Your Honor, before -- Mr. Rhodes advances three  
20 principle arguments, as to why he's entitled to this claim.  
21 First, he says that there's an equitable right, as a result of  
22 a course of conduct that existed between Mr. Rhodes and various  
23 of these -- of these entities. Second, he argues that the  
24 governing documents of these LLCs and these partnerships  
25 entitle him to this claim. And third, he points to a provision

1 THE COURT: You're relying on a decision. Why don't  
2 I have anything -- you know, okay, he's talking to himself, but  
3 you still have to go through procedures, to make a decision.  
4 Why don't I have that?

5 MR. ANDERSON: I believe that's in Mr. Rhodes's  
6 declaration, that that was the purpose for that entry. I don't  
7 think anybody opposes the fact that that was for the purpose.  
8 In fact, I'll have to check our stipulated facts,  
9 acknowledge -- well, that just that it contains the ledger, the  
10 ledger entry was all that was stipulated to. But it is in the  
11 exact amount that we're claiming, and you know, those facts --  
12 you know, that now gets into the factual process of the  
13 decision of making that.

14 THE COURT: Well, doesn't that also raise issues of  
15 his breach of fiduciary duty?

16 MR. ANDERSON: It absolutely could, but I -- but, you  
17 know, that's not an issue for this, on the legal issue of  
18 whether or not he is entitled to pursue this claim, and we can  
19 get into factual issues about whether he breached his fiduciary  
20 duty in doing that. You know, our statement -- version of the  
21 facts and understanding of the facts is that this was a  
22 practice that was allowed, that had been previously done, that  
23 Mr. Rhodes had relied on, and that was approved by the  
24 necessary entities, however --

25 THE COURT: Where is that, in the affidavit?



1 reorganized debtors, that the governing documents would  
2 control. If it is not allowed, under the governing documents,  
3 if it is an improper payment, then no, that would not be a  
4 viable course of conduct.

5 What we have here are permissive governing documents.  
6 They don't disallow it, they don't say you can't do it, they  
7 say you can do it. They don't say that you have to do it. But  
8 they say that you can. And the fact that they did, as  
9 reflected on the books and records, is all the we need, to  
10 establish a -- you know, disputed, unliquid -- you know,  
11 equitable claim at this point.

12 I acknowledge that we have a bit of an uphill road,  
13 in terms of evidence and proof, but I believe that we can meet  
14 those, based on the past practice, and when we dive into the  
15 events -- you know, that happened on March 31st, when that was  
16 recorded on the books and records, and what everybody's  
17 understanding was. You know, understanding, you know, as the  
18 Court just did, it would essentially be Mr. Rhodes talking to  
19 himself.

20 You know, I would assert the premise, you know, here,  
21 for purposes of argument, that the fact that even in his own  
22 mind, as the controlling -- the person who controlled Sage  
23 Brush, which --

24 THE COURT: So you would say that he would knowingly  
25 breach his fiduciary duty, in order to give himself this

1 payment.

2 MR. ANDERSON: How does he breach a fiduciary duty  
3 when he owns a hundred percent of Sage Brush. Sage Brush --

4 THE COURT: When creditors aren't paid.

5 MR. ANDERSON: Well, what fiduciary duty does he have  
6 to creditors?

7 THE COURT: A deepening insolvency.

8 MR. ANDERSON: Well, you know, that -- then you have  
9 questions of maybe fraudulent conveyance. But nothing was  
10 conveyed here. Just this obligation. We're not trying to get  
11 the money away from anybody.

12 THE COURT: Well, he was then. You've just now  
13 changed your mind and said you want it merely as an offset.

14 MR. ANDERSON: Yeah. Well, he --

15 THE COURT: If he filed his claim and he wanted a  
16 claim, he wasn't seeking as an offset. He was seeking to be  
17 paid the money.

18 MR. ANDERSON: But -- I mean he paid the money out  
19 and he felt he was entitled to it, because -- based on past  
20 practices. And it was something that was allowed. The  
21 reorganized debtor, you know, in their prior life, as the  
22 creditors, also permitted this, in the credit agreement. They  
23 didn't prohibit it. If it was something that so offends them,  
24 that he would do this, whether it's at the -- the minute before  
25 he files for bankruptcy or if it was a year before he filed for

# EXHIBIT B

1 UNITED STATES BANKRUPTCY COURT

2 DISTRICT OF NEVADA

3 LAS VEGAS, NEVADA

4 In re: THE RHODES COMPANIES, ) E-Filed: 10/04/11  
5 LLC, )  
6 Debtor. ) Case No.  
7 ) BK-S-09-14814-LBR  
8 ) Chapter 11  
9  
10  
11

11 TRANSCRIPT OF PROCEEDINGS  
12 OF

12 HEARING RE: MOTIONS

13 VOLUME 1

13 BEFORE THE HONORABLE LINDA B. RIEGLE  
14 UNITED STATES BANKRUPTCY JUDGE

15 Tuesday, September 27, 2011

16 10:30 a.m.  
17  
18  
19  
20  
21  
22

23 Court Recorder: Deborah Hemstreet

24 Proceedings recorded by electronic sound recording;  
25 transcript produced by transcription service.

1 employees of the debtors.

2 This was shown by the W-2s that we have submitted.  
3 They're attached to Mr. Rhodes' declaration that show that  
4 these were debtor employees.

5 In his declaration, he says, "In order to avoid a  
6 disruption in the office, I made these payments to them on the  
7 side."

8 I submitted a declaration today which has been stricken  
9 that says the same, but that is the arrangement that he had,  
10 and there are payments that have come back in to Mr. Rhodes to  
11 show and to account for these.

12 Now, on the Greenway one, he wasn't paid about \$800,000  
13 for these payments, but I have set forth --

14 THE COURT: Now, Mr. --

15 MR. HAGUE: -- with this Court --

16 THE COURT: There are a number of entities that did  
17 not file bankruptcy that Mr. Rhodes held.

18 MR. HAGUE: That --

19 THE COURT: And Mr. Rhodes --

20 MR. HAGUE: That's correct.

21 THE COURT: -- indeed, did not file bankruptcy  
22 himself.

23 MR. HAGUE: That's correct, your Honor.

24 THE COURT: Okay.

25 MR. HAGUE: That's correct. But my point is is that

1 these were employed by debtor entities. Coyne, Chin, Stephens,  
2 and Hansen (phonetic) were all employed by debtor entities.

3 And I don't know what else we can show this Court other  
4 than through declarations that haven't been challenged, through  
5 W-2s that haven't been challenged, through checks that haven't  
6 been challenged, and through wires that haven't been challenged  
7 that are coming from Rhodes accounts --

8 THE COURT: Why couldn't it --

9 MR. HAGUE: -- to these individuals.

10 THE COURT: -- have been a capital contribution, in  
11 essence?

12 MR. HAGUE: Why could what?

13 THE COURT: Why wasn't it, in essence, a capital  
14 contribution?

15 MR. HAGUE: Well, Rhodes was entitled to a  
16 distribution of 2.5 million under the credit agreement, and  
17 that's oftentimes how it would work.

18 If he made payments to these individuals, then they would  
19 go ahead and subtract what he was owed at the end of the year  
20 under this 2.5-million-dollar distribution, but the books show  
21 that he did not receive a distribution up to this amount.

22 Now, he paid over \$2,000,000 worth of wages to these  
23 individuals and was reimbursed about 1.2 million, but that's  
24 the arrangement they had in the office.

25 And they keep talking about no agreement and no contract.

1 Well, there was performance. These individuals worked for  
2 several years.

3 It's in Mr. Huygens' declaration. It's in Mr. Rhodes'  
4 declaration, and no one has done anything to rebut that  
5 testimony. I mean, talk about, you know, genuine issues of  
6 material fact.

7 If these were employees of the debtor which no one has  
8 fought about and if, in fact, he made these payments to them  
9 outside out of his own pocket, then he is entitled to  
10 reimbursement.

11 THE COURT: Why isn't it a gift?

12 MR. HAGUE: Because they did services for the debtor.

13 THE COURT: He can make a gift. It's his companies.

14 MR. HAGUE: Yeah. But that's not what he has stated  
15 in his declaration, so we now know there's not a gift. These  
16 are facts. These are facts --

17 THE COURT: Well, sure. After the fact, he does it.

18 MR. HAGUE: No. This happens as he goes through.  
19 That's why he has already been reimbursed 1.2 million.

20 THE COURT: And he wants even more money.

21 MR. HAGUE: He wants what he paid out, your Honor.

22 THE COURT: He wants even more money.

23 MR. HAGUE: Your Honor, you may not like the  
24 situation. I understand that, but I'm just telling you what we  
25 have submitted and what they have failed --

1 THE COURT: After he --

2 MR. HAGUE: -- to even rebut.

3 THE COURT: -- sneakily --

4 MR. HAGUE: I'm sorry?

5 THE COURT: After he goes around his own company to  
6 pay these people --

7 MR. HAGUE: Your Honor --

8 THE COURT: -- how is that equity?

9 MR. HAGUE: Your Honor, he was --

10 THE COURT: How does he have clean hands?

11 MR. HAGUE: He was the --

12 THE COURT: You're asking for equity. How does he  
13 have clean hands?

14 MR. HAGUE: Well, I'm not even necessarily -- I'm  
15 asking for more than equity. I'm asking for something that's  
16 just built into a contract pretty much and performance.

17 THE COURT: Why didn't he write --

18 MR. HAGUE: Now, you're asking --

19 THE COURT: -- a contract?

20 MR. HAGUE: I'm sorry?

21 THE COURT: Why didn't he do a contract?

22 MR. HAGUE: Why did he need to do a contract if there  
23 was performance? You're asking that why they did this around  
24 his companies.

25 Your Honor, he was the companies. He was the nondebtor.



1 He was the debtor. He was the CEO. And as the CEO and the  
2 director and the sole shareholder, he has 100-percent right to  
3 be able to say this is the type of arrangement we're going to  
4 do.

5 I'm going to employ you, but guess what? There's a whole  
6 bunch of other folks in this office --

7 THE COURT: I want to cheat.

8 MR. HAGUE: There's a whole bunch of other folks in  
9 this office who are going to want to cheat up their amount that  
10 they're owed.

11 They're going to come and say, hey, what about us. We  
12 just found out he's making this amount of money through his  
13 W-2, so what does he do because -- give you an example.

14 Chris Stephens, he was in charge --

15 THE COURT: So he chooses --

16 MR. HAGUE: -- of entitlements.

17 THE COURT: -- to employ them on his own.

18 MR. HAGUE: So he chooses to pay them on his own for  
19 the work they were doing for the debtors --

20 THE COURT: Which helped him as well.

21 MR. HAGUE: -- which helped the debtors.

22 THE COURT: Which helped him.

23 MR. HAGUE: I guess if you're saying they're one  
24 economic unit, and he is benefiting the exact same way the  
25 debtors are.

1 two issues, the Greenway -- three, Greenway, the Rhodes  
2 compensation, and the litigation expenses.

3 We can bifurcate it as to amount, well, and I guess that  
4 doesn't make any sense. We need to have it at the same time to  
5 know if there was a contract to what extent, if at all, is the  
6 estate responsible.

7 And if you intend to amend your lawsuit for a fraudulent  
8 conveyance of what he's paid back, already, do it. I mean,  
9 maybe what he was paid already is a fraudulent conveyance. I  
10 don't see why it wouldn't be.

11 MS. LAHAIE: Your Honor, if I could just ask for one  
12 point of clarification also with respect to the Pinnacle claim?  
13 You sustained the debtor's --

14 THE COURT: Sustained the objection.

15 MS. LAHAIE: And just to be clear as to procedurally  
16 what happened then, we had sought relief, just stricken that  
17 from our schedules.

18 My understanding is that once that happens and  
19 (indiscernible) do that the Rhodes entities would then have  
20 30 days to file a proof of claim. I don't know to what extent  
21 we can try to end run that process.

22 THE COURT: I just find there's no merit to the  
23 Pinnacle claim.

24 MS. LAHAIE: Okay.

25 MR. HAGUE: Your Honor, we would not file a proof of

# EXHIBIT C

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

LAS VEGAS, NEVADA

In re: THE RHODES COMPANIES, ) E-Filed: 10/21/11  
LLC, )  
Debtor. ) Case No.  
BK-S-09-14814-LBR  
Chapter 11

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TRANSCRIPT OF PROCEEDINGS  
OF  
HEARING RE: MOTIONS  
VOLUME 1  
BEFORE THE HONORABLE LINDA B. RIEGLE  
UNITED STATES BANKRUPTCY JUDGE

Wednesday, October 5, 2011

9:30 a.m.

Court Recorder: Deborah Hemstreet

Proceedings recorded by electronic sound recording;  
transcript produced by transcription service.

1 THE COURT: To object vis-a-vis him.

2 MR. ANDERSON: Vis-a-vis him --

3 THE COURT: Okay.

4 MR. ANDERSON: -- And vis-a-vis the entities, the  
5 nondebtor entities, that he controls.

6 THE COURT: Okay. So he doesn't control -- how do we  
7 know what entities he even controls?

8 MR. ANDERSON: Well, the --

9 THE COURT: He's kind of kept all that quiet.

10 MR. ANDERSON: Well, the reorganized debtors and the  
11 Litigation Trust are well-aware of it. They've listed them  
12 all.

13 Anyway, I think it's fairly clear that these subpoenas  
14 are designed to assist in the litigation as an improper  
15 purpose.

16 And I think that the Litigation Trust has acknowledged in  
17 numerous conversations with at least several of the recipients  
18 of these that they are extremely overbroad. And at a minimum,  
19 this Court needs to have them reign these in.

20 I asked Mr. Yoder on the telephone call. Supposedly,  
21 they have specific transactions that they are concerned  
22 about.

23 Mr. Roberts' declaration does not identify them. He just  
24 has conclusions about things that appear to be or that may have  
25 happened.

1 litigation from time to time.

2 Is it the smartest way that the Trust should make  
3 discovery? I don't know. That's not my business, but it is a  
4 legitimate way.

5 And it's true while an action is pending that a 2004  
6 should not be used it's not yet, and to suggest that a 2004  
7 isn't appropriate where you're going to lead to litigation is  
8 nonsense because that's the whole point.

9 You do a 2004 to see whether or not there are fraudulent  
10 conveyances, to see whether or not there are transfers that  
11 should be set aside, to see whether or not third parties have  
12 assets of the debtor.

13 We already know that Mr. Rhodes kind of led a slipshod way  
14 of doing business. We have in the proof-of-claim process. He  
15 is claiming he should be reimbursed for paying a third party  
16 because he wanted to keep it off the books.

17 All these kinds of transactions deserve investigation in  
18 other contexts as well. We know he didn't care much about his  
19 books and records from the way he did his business.

20 And, also, it's not the debtor's place to say this  
21 subpoena is burdensome. The persons who are subpoenaed are  
22 perfectly able to do that.

23 Secondly and finally, there was not a good-faith attempt  
24 to try and resolve this. It's just Jim Rhodes saying no and  
25 counsel taking no for an attitude, and I'm not going to